IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

SUO MOTU WRIT PETITION NO. 6285 of 2005

S.C. Malte & Ors. ..Petitioners
Vs.
The Sedcretary, Ministry of Health & Family Welfare, Govt. of India, New Delhi & Anr.. ..Respondents

WITH
CIVIL APPLICATION 2717 OF 2006

Mr. Y.S. Jahagirdar, Amicus Curiae with Mr. Girish Kulkarni, for the petitioners.

Mr.Ravi Kadam, Advocate General with Mr. R.D. Rane, Government Pleader with Mrs. T.P. Thakur, AGP for respondent No.2.

Mr. S.S. Sarkar for Respondent Nos. 1 and 3. Mr. Rajiv L. Patil, for the Applicants in C.A. No.2717 of 2006

CORAM : F.I. REBELLO &

R.V. MORE,JJ.

DATED : 15TH JANUARY, 2007

P.C.

. The petitioners, Retired Judges of this Court, who are settled at Aurangabad, had addressed a letter to the Honourable the Chief Justice. In that letter they had pointed out the difficulties they were facing in getting medical facilities under the Central Government Health Scheme (CGHS). In Maharashtra the said scheme is provided at only 3 cities namely Bombay, Nagpur and Pune. That letter was considered as a Suo Motu Writ Petition by this Court. Various orders came to be passed from time to time.

2. The High Court Judges are covered by the provisions of the High Court Judges (Conditions of Service) Act, 1954, which hereinafter referred to as the Act. Section 23D(2) reads as under:-

> "Notwithstanding anything contained in sub-section (1) but subject to such conditions and restrictions as the Central Government may impose, a retired Judge of the High Court for a State may avail, for himself and his family, any facilities for medical treatment which the Government of that State may extend to him."

Pursuant to the various directions, the State of Maharashtra had submitted draft rules known as Maharashtra State Retired High Court Judges (Facilities for Medical Treatment() Riles 2006, which hereinafter shall be known as Medical Treatment Rules. A draft copy of the Rules as filed before this Court is taken on record and marked Exh."X".

3. Civil Application No.2717 of 2006 was by intervenors who are not retired High Court Judges. Their contention also is that there are no facilities under CGHS Scheme in the area where they are residing.

. In this Suo Motu Writ Petition we are concerned with the provisions of Section 23-D of the Act. The Interveners are not covered by the said provisions. In the light of that it is not possible to entertain the intervention

application. It will be open to the applicants in the intervention application to independently pursue whatever remedy they have before a proper forum. The Civil Application accordingly disposed of.

4. The learned Amicus Curiae has gone through the Rules. It is submitted that these Rules will substantially cover the grievances as raised by the Petitioners. Since the power conferred on the State Government is pursuant to Section 23D(2) it will be open to the State Government to either notify the said Rules in the form which they have now been presented or it is open to the State Government to amend the G.R. which provides for medical benefits to sitting Judges and extend the same bebnefit also to the Retired Judges, who are covered by the draft Rules as submitted and which is substantially the same. It is made clear that these Rules will apply to the Judges who were appointed as Judges of this Court and have since retired and are settled in the State of Maharashtra and Goa.

5. Before parting with the matter we may place on record our appreciation of the services rendered by the learned Amicus Curiae and all other Counsel as also the assistance rendered to this Court by Dr. Bhatia, Additional Director of C.G.H.S., Mumbai, Secretary to the Government of Maharashatra Shri Vidyadhar Kanade and the Principal Secretary to the Government of Maharashtra, Law & Judiciary Department Shri Ashok P. Bhangale.

6. Considering what we have stated above the petition is disposed of in terms of what we have set out in para.6 of the order. Respondent State to notify the Rules or issue the G.R. at the earliest. Rule to that extent made absolute.

. There shall be no order as to costs.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**